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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 6388

DATE COMPLAINT FILED: October 1, 2010

DATE OF NOTIFICATION: October 8, 2010

LAST RESPONSE RECEIVED:

November 29, 2010

DATE ACTIVATED:

January 14, 2011

EXPIRATION OF SOL: December 31, 2014 –
October 29, 2015

COMPLAINANT:

Michael Chernus

RESPONDENTS:

Mattie Fein for Congress and Kelly Lawler,
in her official capacity as treasurer
Mattie Fein

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(26)(B)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 100.33(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Mattie Fein, a candidate for the U.S. House of Representatives from California's 36th Congressional District, may have not had the personal funds necessary to contribute and loan \$108,222 to her principal campaign committee, Mattie Fein for Congress ("Committee") during the 2010 election cycle. Complainant bases his allegation on Ms. Fein's financial disclosure statement filed with the U.S. House of Representatives, which does not

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1 reflect sufficient personal assets and income to support her contributions and loans to the
2 Committee.¹

3 Ms. Fein's financial disclosure statement indicates that during 2009 she received a \$3,000
4 honorarium from The Litchfield Group, Inc. and income from a marital separation agreement in
5 the range of \$15,001-\$50,000. For 2010, Ms. Fein again disclosed income from a marital
6 separation agreement in the range of \$15,001-\$50,000. In her sworn response to the complaint,
7 Ms. Fein averred that pursuant to her separation agreement with Bruce Fein, she received
8 \$20,000 per month and that she "inadvertently checked an erroneous box" on her financial
9 disclosure form. According to Ms. Fein, "the 'correct box' . . . should have indicated receipt of
10 between \$100,000-\$1,000,000 from the separation agreement during 2009 and 2010."²

11 Ms. Fein's former husband, Bruce Fein, corroborated her statement in a sworn affidavit:
12 "During 2009 and 2010, I paid Mattie Fein \$20,000 per month pursuant to a separation
13 agreement." Affidavit of Bruce Fein, attached to Ms. Fein's response to the complaint. Based
14 on the available information, we recommend that the Commission find no reason to believe that
15 Mattie Fein or Mattie Fein for Congress and Kelly Lawler, in her official capacity as treasurer,
16 violated 2 U.S.C. § 441a(f).

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 The Federal Election Campaign Act of 1971, as amended ("Act"), provides that no
19 person shall make contributions to any candidate and his authorized political committee with
20 respect to any election for Federal office which in the aggregate, exceeded \$2,400 in the 2010

¹ Complainant filed two copies of the complaint, both of which were received on October 1, 2010. Both copies make the same allegations, but one of the copies included Ms. Fein's financial disclosure statement as an attachment.

² In the Committee's response to the complaint, Kelly Lawler, the Committee's treasurer, stated that Ms. Fein has amended her financial disclosure statement. However, as of January 14, 2011, no amended financial disclosure statement had been filed with the Clerk of the House of Representatives.

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1 election cycle. 2 U.S.C. § 441a(a)(1)(A). In addition, the Act provides that no candidate,
2 officer, or employee of a political committee shall knowingly accept any contribution that
3 exceeds the contribution limits. 2 U.S.C. § 441a(f).

4 Commission regulations provide that candidates for Federal office may make unlimited
5 expenditures from personal funds, including contributions to the candidate's principal campaign
6 committee. See 11 C.F.R. § 110.10; Advisory Opinion 1984-60 (W. Patrick Mulloy). The Act
7 defines "personal funds" as, *inter alia*, "income received during the current election cycle of the
8 candidate" 2 U.S.C. § 431(26)(B); see also 11 C.F.R. § 100.33(b). Spousal support is
9 treated as income for tax purposes. See 26 U.S.C. § 71; I.R.C. § 71. Mattie Fein received
10 regular spousal support payments from her former husband pursuant to a formal separation
11 agreement, and therefore, it is appropriate to treat those payments as "personal funds" under the
12 Act.

13 Based on the sworn statements made by Mattie and Bruce Fein, it appears that Ms. Fein
14 had income totaling \$483,000 (\$20,000 x 24 months + \$3,000 honorarium) during the 2010
15 election cycle. Thus, Ms. Fein had sufficient income to cover the \$108,222 in contributions and
16 loans she gave to the Committee. Moreover, Complainant does not provide any information
17 about another source of funds that may have been used to make the contributions and loans.
18 Rather, the allegation seems to rest solely on the observation that Ms. Fein's financial disclosure
19 statement did not reveal enough personal assets and income to fund the contributions and loans.
20 Accordingly, we recommend that the Commission find no reason to believe that Mattie Fein or
21 Mattie Fein for Congress and Kelly Lawler, in her official capacity as treasurer, violated
22 2 U.S.C. § 441a(f), and close the file.

III. RECOMMENDATIONS

1. Find no reason to believe that Mattie Fein violated 2 U.S.C. § 441a(f).
2. Find no reason to believe that Mattie Fein for Congress and Kelly Lawler, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f).
3. Approve the attached Factual and Legal Analyses.
4. Approve the appropriate letters.
5. Close the file.

Christopher Hughey
Acting General Counsel

Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

March 4, 2011
Date

BY:

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Assistant General Counsel

Jack Gould
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